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14 ROWLAND MARCUS ANDRADE

15 **UNITED STATES DISTRICT COURT**

16 **NORTHERN DISTRICT OF CALIFORNIA**

17 **SAN FRANCISCO DIVISION**

18 UNITED STATES OF AMERICA,

Case No. 3:20-cr-00249-RS

19 Plaintiff,

**RESPONSE TO UNITED STATES'
MOTION FOR RULE 15 DEPOSITION OF
JACK ABRAMOFF**

20 v.

Judge: Hon. Richard Seeborg, Chief Judge

21 ROWLAND MARCUS ANDRADE,

22 Defendant.

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25 Defendant Rowland Marcus Andrade files this Response to the United States' Motion for
26 Rule 15 Deposition of Jack Abramoff.

1 In response to the government's Motion for Rule 15 Deposition of Jack Abramoff,
 2 defendant Rowland Marcus Andrade reports that, as noted by the government, he has been
 3 working with the government to obtain the information he needs to balance protecting Mr.
 4 Abramoff's health with Mr. Andrade's Sixth Amendment rights to confront the person who
 5 likely is the central government witness. As his current proposed solution, Mr. Andrade requests
 6 that (1) Mr. Abramoff's testimony be taken live during trial, remotely from the Washington D.C.
 7 area if he cannot travel at that time; (2) regardless of how the testimony is taken, as the
 8 government proposes, the Court presides over the testimony live and in real time; and (3) counsel
 9 for the defendant, and the defendant if he so chooses, be present with Mr. Abramoff when his
 10 testimony is taken.

11 Mr. Andrade makes these requests for the following reasons:

12 1. Taking Mr. Abramoff's testimony live during the trial, while potentially creating
 13 logistical issues, is most consistent with the normal trial process. *See United States v. Gigante*,
 14 971 F.Supp. 755, 758 (E.D.N.Y. 1997), *aff'd*, 166 F.3d 75 (2d Cir. 1999) (explaining that
 15 “[r]eceiving contemporaneous testimony via closed circuit televising affords greater protection
 16 of . . . confrontation rights than would a deposition,” and declining to set a higher bar for live
 17 virtual testimony than for a deposition). In addition, proceeding in this fashion would hopefully
 18 allow the defense to have an expert review Mr. Abramoff's medical records to assess his risks
 19 when traveling, and, if appropriate, make a case to the court that Mr. Abramoff come to the
 20 courtroom to testify. In order to make such an assessment, the defense has requested those
 21 records; the defense appreciates the government's assistance in seeking to gather them; and the
 22 defense would like to be able to assess them before signing off on a remote deposition that will
 23 deprive the jury of the full range of observations of a critical witness that the jury would have if
 24 the witness testified in court. At this point, the only medical records that the defense possess are
 25 records supplied by, and apparently selected by, Mr. Abramoff.

26 2. Counsel for Mr. Andrade should be in the same room with Mr. Abramoff when
 27 his testimony is taken, both because that would most closely approximate his cross-examination

1 opportunity at trial, and because Mr. Abramoff has proven to be an exceptionally untrustworthy
2 character who might otherwise be coached or signaled by his counsel or other third parties
3 during his cross examination. Counsel for Mr. Andrade are willing to wear masks in order to
4 mitigate any possible risk to Mr. Abramoff.

5 3. Mr. Andrade joins with the government in requesting that the Court participate in
6 the taking of Mr. Abramoff's testimony, live and in real time, either in person or by video, as the
7 Court chooses. This will better keep Mr. Abramoff under control, and will allow counsel to
8 rephrase or redirect questions to which objections have been sustained.

9 4. The defense accepts that Mr. Abramoff's doctor appropriately recommends that
10 he not travel, at least for non-medical purposes, in order to avoid crowds. Gov't Motion, Exh. 5.
11 But those suffering from advanced cancer often do choose to travel (presumably with N-95
12 masks), and “[commercial air travel] problems specifically related to a patient’s cancer are rare.”
13 Colin Perdue & Simon Noble, *Foreign travel for advanced cancer patients: a guide for*
14 *healthcare professionals*. Postgraduate Medical Journal, 83, 981 (2007), 437–44.
15 <https://doi.org/10.1136/pgmj.2006.054593>. In addition, Mr. Abramoff's doctor reports that “at
16 times” his symptoms will prevent Mr. Abramoff from being able to fulfill work-related
17 responsibilities, Gov't Motion, Exh. 6 – suggesting that, at least at some times, he will be in
18 reasonable shape. Given the impact on Mr. Andrade’s constitutional rights, the defense requests
19 that the Court allow this process to unfold before ruling on the government’s request.

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1 Respectfully submitted,

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3 By: /s/ Michael J. Shepard
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